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EXTRAORDINARY

PART II—Section 3

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## ELECTION COMMISSION, INDIA.

### NOTIFICATIONS

New Delhi, the 24th January 1953

S.R.O. 216.—WHEREAS the elections of the persons named in column 1 of the Schedule to the Election Commission's notification No. 19/142/52-Elec. III dated the 28th July, 1952, as members of the House of the People from the constituencies specified in the corresponding entries in column 3 thereof have been called in question by election petitions duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by the persons whose names and addresses are given in the corresponding entries in column 2 of the said Schedule;

AND WHEREAS, by notifications No. 19/142/52-Elec. III, dated the 28th July and 16th September, 1952, the Election Commission appointed:—

- (1) Kamala Sahai, District Judge, Bhagalpur,
- (2) Shri Uma Kanta Prasad Sinha, Retired District Judge, Patna, and
- (3) Shri Rajeshwari Prasad, Advocate, Jogsar, Bhagalpur,

as the members of each of the Election Tribunals for the trial of the said petitions and further appointed Shri Kamala Sahai as the Chairman of each of the Tribunals so constituted;

AND WHEREAS, Shri Kamala Sahai, Chairman, is unable to perform his functions on account of his proceeding on leave;

Now, THEREFORE, in pursuance of Section 86 of the said Act and in partial modification of Commission's notification No. 19/142/52-Elec. III dated the 28th July, 1952, the Election Commission hereby appoints Shri Ramnandan Prasad, District and Session Judge of Bhagalpur, as Chairman of each of the Election Tribunals for the trial of the said petitions.

[No. 19/142/52-Elec. III].

S.R.O. 217.—WHEREAS the election of Shri Ramnath as a member of the Legislative Assembly of the State of Uttar Pradesh, from the Deoria South Constituency of that Assembly, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by Shri Suraj Narain, son of Shri Bengali, Village Mundera Tappa Kachuwar, Pargana Salempur Majhauli, Tehsil, Deoria, District Deoria;

AND WHEREAS the Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act for the trial of the said petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Election Commission;

NOW THEREFORE in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

### BEFORE ELECTION TRIBUNAL, GORAKHPUR

PRESENT:—Sri Brij Narain.—Chairman.

Sri Brij Behari Lal,

Sri Sukhdeo Prasad—Members.

ELECTION PETITION NO. 161 OF 1952.

Sri Suraj Narain—Petitioner.

*Versus*

1. Sri Ram Nath.
2. Sri Rameshwar.
3. Sri Dr. Sushil Chandra.
4. Sri Kailashpati.
5. Sri Bishwanath.
6. Sri Nand Lal Saggal.
7. Sri Mathura Parsad.
8. Sri Sheopujan.
9. Sri Arjun.
10. Sri Dudhnath—Respondents.

This is an election petition under section 81 of the Representation of the People Act (hereinafter called the Act) on behalf of Sri Suraj Narain who is an elector to Deoria South Constituency challenging the election of the respondent No. 1 from that constituency on a number of grounds. It has been alleged in the petition that the respondent No. 1 contested the election along with the respondents No. 8 to 10 and as a result of polling which took place on 28th January 1952 the respondent No. 1 was declared elected from this constituency. According to the petitioner the respondents No. 9 & 10 Arjun and Dudh Nath had filed their nomination papers before the Returning Officer but their nomination papers were rejected on insufficient grounds and so they could not contest the election. It has further been alleged that the election had not been a fair and free election by reason of corrupt practices and undue influence practised on the electors and their relations and friends and as coercion and intimidation had been exercised at the election as voters were told that their ration would be stopped if they would not vote for the Congress and as the respondent No. 1 is a very popular homoeopathic doctor who has got vast influence upon the poor public, Harijans, members of depressed classes and also amongst the Mohammedans of the constituency and he was not allowed to contest the election, the result of the election was materially affected on account of the wrongful rejection of the nomination papers of the respondents No. 9 and 10 and also on account of the illegal and corrupt practices mentioned above. The petitioner has, therefore, prayed that the entire election should be declared to be wholly void and the applicant be awarded costs of these proceedings.

The respondent No. 1 has contended that no corrupt or illegal practices were resorted to by him or his agents and the respondent No. 1 took all reasonable precautions and adopted all reasonable means for preventing the commission of corrupt or illegal practices at the election. It has further been contended that the respondent No. 9 is an unqualified homoeopath practitioner of a very ordinary status and if his nomination papers had not been rejected he could have secured just a few votes and those not from persons who eventually voted for the Congress but only from the votes of defeated candidates for the respondent No. 9 had Socialist leanings and he was a dummy candidate of the Socialist. According to this respondent the nomination papers of the respondents No. 9 and 10 were rejected for valid reasons and the result of the election has not at all been materially affected by the rejection of these nomination papers. The remaining respondents have been absent.

The following issues were framed on the pleadings of the parties:—

1. Was undue influence exercised by or on behalf of respondent No. 1 extensively and in the Election? If so, its effect?

2. Was coercion and intimidation exercised by or on behalf of respondent No. 1 to secure votes for him?
3. Whether respondent No. 1 or his agents, supporters and associates committed corrupt practices mentioned in para. 5 of the petition?
4. Were the nomination papers of respondent No. 9 and 10 improperly rejected and has the result of election been affected by such rejection?
5. Were posters, hand-bills and placards issued by or on behalf of respondent No. 1 without the names of publishers and printers? If so, its effect?
6. Were the ballot boxes kept at a low level and could the voters not see the symbols on them?
7. Were votes illegally, invalidly and improperly accepted and inserted for the respondent No. 1 and did this affect the result of election?
8. Was there any infringement of rules, instructions, orders or provisions of law by Presiding or Polling Officers in or during election in not rejecting votes, in putting illegal votes in ballot boxes of respondent No. 1? If so, its effect?
9. Is the return of election expenses filed by the respondent No. 1 irregular, incorrect and inconsistent with rules and laws? If so, its effect?
10. Was the election of the respondent No. 1 not free or fair? If so, its effect?
11. Whether the corrupt practices, if any, were committed contrary to the orders and without the sanction and connivance of respondent No. 1?

### FINDINGS

**Issue No. 4.**—The learned counsel of the parties stated before the Tribunal on the 12th January, 1953 that Issue No. 4 be decided first and so the parties were allowed to produce their entire oral evidence on this Issue. The respondent No. 1 had not denied para. 4 of the petition in which it was alleged that the respondents No. 9 and 10 filed their nomination papers before the Returning Officer but their nomination papers were rejected and, as such, they could not contest the election. In para. 9 of the Petition, it was alleged that the respondent No. 9 filed two set of nomination papers, in one set proposer was Sheopujan Lal, whose names appeared at serial Number 857 H 9 Ward No. 7 of the Constituency and the seconder was Ram Narain, whose name appeared on serial No. 728 D 28, Ward No. 6 of the electoral roll of the constituency while in the second set of nomination papers the proposer was Alfard, whose name appeared on serial number 1019 V 123 Ward No. 4 and the seconder was Sita Ram, whose name appeared at Serial No. 758 O 225, Ward No. 5 of the electoral roll of the constituency. According to the petitioner the Returning Officer, in order to help the Congress Candidate, rejected the nomination papers of respondent No. 9, who was reputed to win the Election with the following brief order:

"Proposers and seconds are not identifiable. Rejected."

The Petitioner has produced copies of the two nomination papers, marked Ext. 1 and 2 and these nomination papers show that the allegations mentioned above are substantially correct. The respondent No. 1 did not file any objection on the nomination papers of the respondent No. 9 and so the respondent No. 9 or the present petition could get no opportunity of meeting the grounds on which the nomination papers, Exts. 1 and 2 were ultimately rejected by the Returning Officer.

It is now to be seen whether the serial numbers of proposers and seconds on each of the nomination papers Ext. 1 and 2 were identifiable or not. In the nomination papers, Ext. 1, Sheopujan Lal is the proposer and Ram Narain is the seconder. A copy of the electoral roll has been filed before us and it shows that in ward No. 7 Sheopujan Lal son of Sita Ram Lal aged 31 years was entered at house No. H 9 on serial No. 857 and so the particulars given in the electoral roll fully tally with the particulars which have been given in the nomination papers. The mere fact that in the copy the name of the constituency was left blank will not in any way be deemed to be sufficient to show that Sheopujan Lal's name in the electoral roll was not identifiable when the whole description given in the nomination papers fully tallies with the description given in the Electoral roll. So far as the name of Ram Narain seconder is concerned there is no doubt that the serial number as given in the nomination paper is 728, but in the electoral roll his number is printed at No. 729. It has not been disputed before us that there is some printing mistake in the numbers in the electoral roll at this place and the correct number as against Ram Narain should have been 728. It has not been disputed before us

that the other particulars shown in the electoral roll regarding this Ram Narain tally with the details as given in the nomination paper and so there appears to be no justification for the Returning Officer to have rejected this nomination paper Ext. 1 on insufficient grounds mentioned above.

Regarding the other nomination paper Ex. 2 a copy of the electoral roll has been produced regarding Deoria South Constituency and it shows that Alfard's name appears on serial No. 1019 and he has shown as occupying house No. 123 ward No. 4 and this description fully tallies with the description given in the nomination paper Ex. 2. Similarly regarding the seconder Sita Ram this electoral roll shows that his name is entered at No. 758 in ward No. 5 and he was shown to be occupying house No. 225. This description fully tallies with the description given in the nomination paper and simply because the name of the constituency was not given in the electoral roll and only Deoria Town had been printed there as electoral unit *vide* Section 22(a) of the Representation of People Act 1951 and rules 2(d), 3 and 4 of the Representation of People (Preparation of Electoral Roll) rules 1950, it cannot be said that Sita Ram's name could not be identified on the electoral roll of Deoria South Constituency simply because the figures 758 and 225 were separate by II (two pais) it could not be said that it was intended in the nomination paper to show that Sita Ram's serial number was 7581 or that he occupied house No. 1225. If the Returning Officer had any doubts on these points he should have satisfied himself by a careful comparison of the nomination papers with the electoral rolls and also by making a summary inquiry from the candidate himself or from his proposers and seconder, but this was not done and so the whole election is liable to be declared void under the provisions of the Representation of People Act 1951.

Section 32 of the Representation of the People Act 1951 lays down that any person may be nominated as a candidate for election to fill a seat in any constituency if he is qualified to be chosen to fill that seat under the provisions of the Constitution and this Act.

Section 33 provides for presentation of nomination paper and requirements for a valid nomination and sub-section (5) of this Section clearly provides that on the presentation of a nomination paper, the Returning Officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer and seconder as entered in nomination paper are the same as those entered in the electoral rolls:

Provided that the Returning Officer may—

- (a) permit any clerical error in the nomination paper in regard to the said names or numbers to be corrected in order to bring them into conformity with the corresponding entries in the electoral rolls; and
- (b) when necessary, direct that any clerical or printing error in the said entries shall be over-looked.

Sub-section (6) provides that if at the time of the presentation of the nomination paper the Returning Officer finds that the name of the candidate is not registered in the electoral roll of the constituency for which he is the Returning Officer, he shall for the purposes of sub-section (5) require the person presenting the nomination paper to produce either a copy of the electoral roll in which the name of the candidate is included or a certified copy of the relevant entries in such roll.

It is thus clear that the Returning Officer should have satisfied himself by looking into the electoral roll of Deoria South Constituency which was before him and he should have satisfied himself by making inquiries from respondent No. 9 as to how No. 729 had been entered instead of No. 728 regarding Ram Narain seconder and if this had been done the mistake in printing would have been brought to his notice in no time. If the respondent No. 1 had filed any objection on the nomination papers of the respondent No. 9, the latter could have known that his nomination papers were likely to be rejected on the grounds on which they have been rejected but as no objections were filed and the Returning Officer did nothing to satisfy himself as required by sub-section (5) of section 33 of the Representation of People Act, we are clearly of opinion that the nomination papers of the respondent No. 9 were improperly rejected and the respondent No. 9 was improperly debarred from contesting the election *vide* Thakur Mahindra Nath Sahdeo vs. B. Devaki Prasad Sinha reported in Jagat Narain's Election Petition Vol. III, p. 228, which lays down that a description of a candidate sufficient to identify the candidate is sufficient to make a nomination paper valid; a rigid adherence to the Electoral Roll is not necessary. *Vide* also Babu Aram Anugrah Narain Singh vs. Sharda Parsad Singh, reported in Jagat Narain's Election Petition, Volume III, p. 232, which

lays down that it is the duty of the Returning Officer to scrutinize the nomination papers and to decide whether a candidate is eligible for being a candidate or not and the power of Commissioner's appointed to hear an election petition into restricted to cases of corrupt practices and inaccurate descriptions only. The Commissioners have the power to interfere when they find that the discretion vested in the Returning Officer has been improperly exercised. *Vide also Jagat Narain's Election Petitions, Volume II, pages 4 and 149.*

It is now to be seen whether the result of the election was materially affected or not on account of improper rejection of the nomination paper of the respondent No. 9. Sri Ram Nath respondent No. 1 has appeared in the witness-box and he has stated that no independent candidate could succeed in the last election in the districts of Basti, Gorakhpur and Deoria and so the respondent No. 9 could also not succeed if he had been allowed to contest the election. In cross-examination this respondent has admitted that the respondent No. 9 practices as a homeopathic practitioner and he has socialist views. It has further been admitted by him that some socialist candidates have been returned as M.L.As. and M.Ps. from Deoria district. Ram Sohan Pande and Shanker Pande witnesses have been produced by the respondent No. 1 to show that the independent candidates had no support in the villages for this constituency but as it has been admitted by the respondent No. 1 that Arjun respondent No. 9 had socialist views and some socialist candidates were returned as M.L.As. and M.Ps. from Deoria District, it cannot be said positively that Arjun could not have been elected from Deoria South Constituency if he had been allowed to contest the election. Sri Suraj Narain petitioner has stated that Arjun is a leading homeopathic practitioner of Deoria and he mostly distributes free medicines to patients with the result that he could be expected to secure sufficient votes. There is no doubt that the petitioner has not examined Arjun or Dudhnash before us but the present petitioner also has got a right to challenge the election as an elector. It has been mentioned in para. 10 of the petition that respondent No. 1 perhaps want to the Hon'ble High Court but his application was dismissed there and so this respondent ceased to take any interest subsequently. If the respondent No. 9 had any reasonable chances of success as has been stated by Suraj Narain petitioner on account of his popularity and also on account of his socialist views, the result of the election must be deemed to be materially affected because of the illegal rejection of his nomination paper. It has not been disputed before us that about 70 per cent. of the voters did not cast their votes and so the present petition cannot be deemed to be malafide. It has been laid down in Election Petition No. 3 of 1952 published in the Government of India Gazette Extraordinary, dated 19th November 1952 that the mere rejection of the nomination paper if improper, is sufficient to conclude that the result of the election has been materially affected, *vide also Election Petition No. 2 of 1952 Sri Hansraj vs Sri Ram Singh etc. Doabla's Indian Election Cases, Vol. I, p. 98—Amir Mohammad Khan vs. Ata Mohammad Khan*, in which it has been clearly laid down that it is well settled that when the nomination paper of a candidate is improperly rejected the presumption is that the result of the election is materially affected thereby. The reason is that the entire electorate is prevented from exercising their rights to elect a particular candidate, had they wished to elect him. The ruling of Pyarey Lal vs. Amba Prasad, reported in Jagat Narain's Indian Election Petitions, Vol. II, p. 4 also lays down that where a nomination paper of a candidate has been improperly rejected, the ordinary presumption is that the result of the election has been materially affected. An improper rejection or acceptance of a nomination paper is a grave irregularity. *Vide also Rai Saheb Bhagwati Das vs. Thakur Bishambhar Singh*, reported in same Volume at p. 62, which shows that the improper refusal of a nomination paper is a grave irregularity that raises a very strong presumption that the election has been materially affected by it. *Vide also E. Few vs. C. E. Gibbon* reported at p. 66, Sen and Potdar's Indian Election Cases, and at p. 106 of the same Volume, *Kalapraj vs. Bishambhar Nath Tirpathi* and another, at p. 284, *Amir Mohammad Khan Sardar vs. M. Ata Mohammad* and also at p. 564 of the said Volume, *Bashir Ahmad vs. Mohammad Akhtar Husain Khan* and others, in which it has been held that omission to describe subdivision in which the names of the candidate and his proposer and seconder are entered, or the omission to state the denomination in the nomination form is not a breach of any mandatory provisions of Law and cannot invalidate a nomination paper.

We are, therefore, of opinion that the result of the election has been materially affected on account of improper rejection of the nomination papers of respondent No. 9. No cogent evidence has been produced regarding the respondent No. 10 and so we hold that the nomination papers of respondent No. 9 were improperly rejected and the result of election has been materially affected thereby. The Issue is, therefore, decided in the affirmative. The other issues need not be determined as the trial is concluded with the determination of Issue No. 4.

We, therefore, declare that the election of Deoria South Constituency held in 1951-52 is wholly void. We allow the Petitioner a lump sum of Rs. 200 as costs as against the respondent No. 1. The remaining respondents will neither pay nor receive any costs.

(Sd.) BRIJ NARAIN, Chairman.

1. (Sd.) B. B. LAL, Member.

2. (Sd.) SUKHDEO PD., Member.

*The 19th January, 1953.*

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[No. 19/161/52-Elec-III.]

P. S. SUBRAMANIAN,

Officer on Special Duty.